



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,681	02/25/2004	Shanta Modak	A34446-A-PCT-USA-AA	3011
21003 7590 03/30/2010 BAKER BOTTS L.L.P. 30 ROCKEFELLER PLAZA 44TH FLOOR NEW YORK, NY 10112-4498				
EXAMINER				
SAMALA, JAGADISHWAR RAO				
ART UNIT		PAPER NUMBER		
1618				
NOTIFICATION DATE		DELIVERY MODE		
03/30/2010		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DL.NYDOCKET@BAKERBOTTS.COM

### Office Action Summary

**Application No.**

10/786,681

**Applicant(s)**

MODAK ET AL.

**Examiner**

JAGADISHWAR R. SAMALA

**Art Unit**

1618

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 February 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/CD)  
Paper No(s)/Mail Date 02/24/2010
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Receipt is acknowledged of Applicant's Request for Continued Examination and Remarks filed on 02/24/2010.

- Claims 1-4 are pending in the instant application.

### **Continued Examination Under 37 CFR 1.114**

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 02/24/2010 has been entered.

### **Information Disclosure Statement**

The information disclosure statement (IDS) submitted on 02/24/2010 was noted and the submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

### **Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scholz et al (US 2003/0211066) in view of Burnier et al (US 5,736,574), Modak et al (US 5,985,918 herein after '918) and Modak et al (US 5,965,610 herein after '610) **are maintained** for the reasons of record in the previous office action filed on 11/24/2009.

Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scholz et al (US 2003/0211066) in view of Burnier et al (US 5,736,574), Modak et al (US 5,985,918 herein after '918) and Jampani et al (US 6,022,551) **are maintained** for the reasons of record in the previous office action filed on 11/24/2009.

Applicant arguments filed on 02/24/2010 have been fully considered but they are not persuasive.

Applicant argues that Burnier's teachings are limited to the combination of octoxyglycerin and an antimicrobial lipid or hydrophilic. Burnier does not suggest or describe that octoxyglycerin can be combined with any other antimicrobial agents, and in particular, a quaternary ammonium compounds, to achieve a synergistic effect.

This argument is not persuasive because the limitation of antimicrobial synergism is a feature that the composition comprising the combination of antimicrobial agents and octoxyglycerin possesses. Burnier teaches that combinatory antimicrobial immixtures comprising at least one antimicrobial hydro lipid and/or lipid and effective amount of at least one glyceryl monoalkyl ether manifests a synergistic effect with regard to the antimicrobial activity of the combination (col. 1 line 40-46). Since the combination of glyceryl monoalkyl ether and antimicrobial agent manifests a synergistic effect, it would obviously produce the same result when glyceryl monoalkyl ether of the composition combined with quaternary ammonium compounds based on the teachings of Scholz and Burnier, the resulting composition will intrinsically have the synergistic antimicrobial effect as instantly claimed.

Applicant argues that Modak '610 discloses that only zinc gluconate was able to successfully form a gel matrix when combine with water, alcohol and an antimicrobial. The artisan would have no expectation that other zinc salts, for example, the zinc salicylate, zinc acetate, or zinc stearate of Modal'918 could be successfully incorporated into a hydroalcoholic gel.

This argument is not persuasive since Modak teaching includes soluble zinc salts such as zinc gluconate, zinc salicylate and other zinc salts. However, zinc stearate in combination of water, alcohol, and octoxyglycerin (hydroalcoholic composition) would be fairly soluble and produce a stable formulation. Since, Modak teaches same zinc salts as instantly claimed, they will inherently dissolve in water/alcohol mixture to form a gel matrix. Same compounds will have same properties.

Applicant argues that Jampani does not cure the other references deficiencies with regard to antimicrobial synergy or the inclusion of two zinc salts into a hydralcoholic gel.

This argument is not persuasive since this reference is combined for its teachings of knowledge in the art of rapidly acting antimicrobial alcohol-containing composition comprising triclosan from about 0.1-0.5% by weight and benzalkonium chloride from about 0.02-1.0% by weight of antimicrobial agents, and the composition provides more persistent antimicrobial activity and effective in preventing the appearance of microbes for an extended periods of time.

### **Double Patenting**

Claims 1-4 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-2, 6, 24-25 and 29 of U.S. Pat. 6,846,846 B2 (herein after '846) abeyance is acknowledged and maintained.

### **Conclusion**

No claims are allowed at this time.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAGADISHWAR R. SAMALA whose telephone number is (571)272-9927. The examiner can normally be reached on 8.30 A.M to 5.00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Hartley can be reached on (571)272-0616. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jake M. Vu/  
Primary Examiner, Art Unit 1618

Jagadishwar R Samala  
Examiner  
Art Unit 1618

sjr